

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

March 2, 2009

Charles R. Fulbruge III  
Clerk

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No. 08-50982  
Summary Calendar

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UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

TAYRELL RICHARD LARRY

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 6:99-CR-90-ALL

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Before KING, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:\*

Tayrell Richard Larry, federal prisoner # 03016-180, seeks leave to proceed in forma pauperis (IFP) to appeal the dismissal of his motion filed pursuant to 28 U.S.C. § 2241, wherein he sought to have the district court apply U.S.S.G. § 5G1.3(b) and adjust his sentence for distribution of crack cocaine. The district court denied IFP and certified that Larry's appeal was not taken in good faith. By moving for leave to proceed IFP, Larry is challenging the district court's certification. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997); FED. R.

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

APP. P. 24(a)(5). However, Larry has not demonstrated any nonfrivolous ground for appeal.

Larry argues that the district court should have credited his time in state custody to his federal sentence pursuant to § 5G1.3(b). Because Larry's petition challenges errors that occurred at sentencing and does not satisfy the requirements of the savings clause of 28 U.S.C. § 2255, it should not have been brought as a § 2241 petition. *See Reyes-Requena v. United States*, 243 F.3d 893, 904 (5th Cir. 2001). Moreover, Larry's challenge to the application of the Guidelines is not cognizable in a § 2255 motion. *See United States v. Cervantes*, 132 F.3d 1106, 1109 (5th Cir. 1998). Larry's petition was an unauthorized motion which the district court was without jurisdiction to entertain. *See United States v. Early*, 27 F.3d 140, 142 (5th Cir. 1994). Larry's appeal is from the denial of an unauthorized motion.

Larry's appeal does not involve legal points arguable on their merits, and it is therefore frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, the IFP motion is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202; 5TH CIR. R. 42.2